{deleted text} shows text that was in SB0103 but was deleted in SB0103S01.

inserted text shows text that was not in SB0103 but was inserted into SB0103S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Gene Davis proposes the following substitute bill:

WINE SUBSCRIPTION PROGRAM

2020 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Gene Davis

Н	ouse	Sponsor:				

LONG TITLE

General Description:

This bill {establishes a wine subscription program under} amends the Alcoholic Beverage Control Act to establish a wine subscription program.

Highlighted Provisions:

This bill:

- defines terms;
- requires the Department of Alcoholic Beverage Control (department) to establish and administer a wine subscription program (;
- establishes parameters and requirements of in which:
 - the department purchases a wine subscription on behalf of an individual;
 - <u>a individual pays to the department the cost of the wine subscription plus, in</u> addition to any tax or fee, an established markup;

- wine purchased through the wine subscription program is shipped or transported to a department warehouse;
- the department ships or transports wine purchased through the wine subscription program to a state store or package agency; and
- an individual collects the wine from a state store or package agency;
- <u>permits the department to charge a fee to cover costs of administering</u> the wine subscription program;
- requires a wine subscription business to register with the department in order to ship or transport wine to a customer in the state;
 - establishes requirements for a registered wine subscription business;
- - makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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$\frac{\{32B-1-104\}\{32B-2-304\}\}$, as last amended by Laws of Utah $\{2017\}$, Chapter 455

$\frac{32B-2-202\}{32B-2-209\}$, as last amended by Laws of Utah 2012\, Chapter 365

$\frac{32B-2-503\}{32B-2-503\}$, as last amended by Laws of Utah 2011\, Chapters 307\, and 334

$\frac{32B-2-601\}{32B-2-601\}$, as last amended by Laws of Utah 2011\, Chapter 307

$\frac{32B-2-605\}{32B-4-401\}$, as last amended by Laws of Utah 2019\, Chapter 403

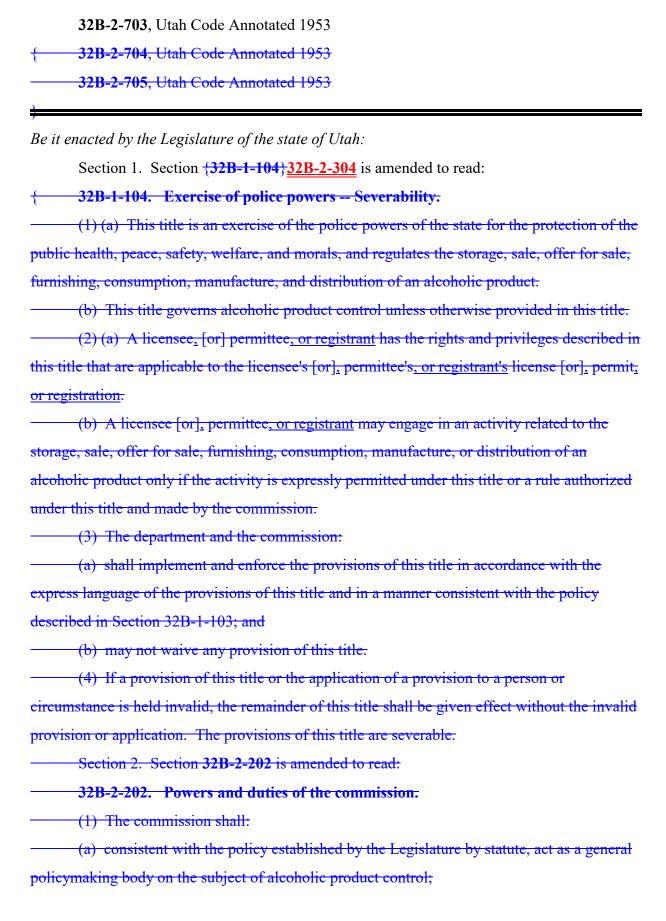
$\frac{32B-4-401\}{32B-4-420\}$, as last amended by Laws of Utah 2016\, Chapter 266

$\frac{32B-4-420\}{32B-4-420\}$, as last amended by Laws of Utah 2011\, Chapters 307\, and 334

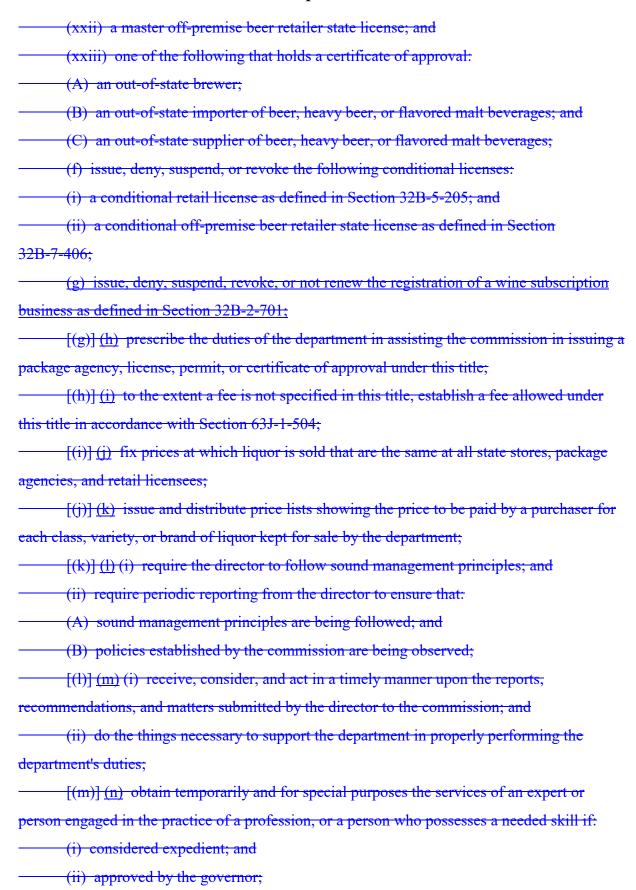
$\frac{2019\}{2019\}$, Chapter 403
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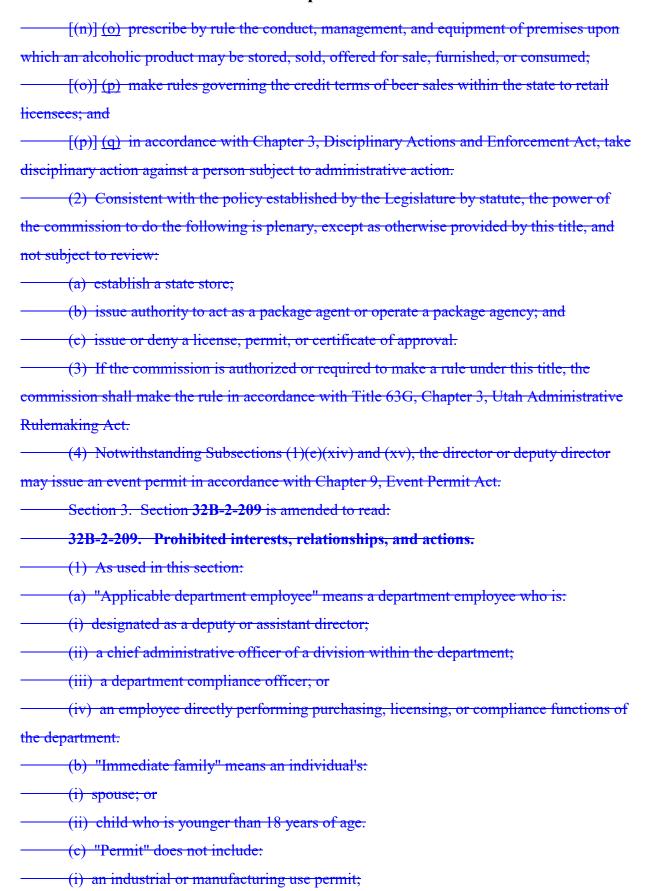
ENACTS:

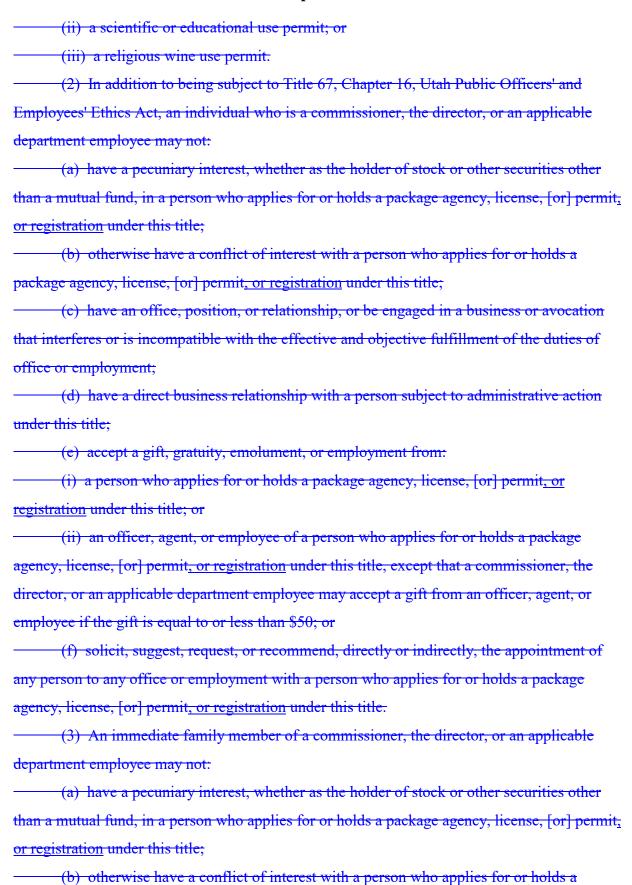
32B-2-701, Utah Code Annotated 1953 **32B-2-702**, Utah Code Annotated 1953



(b) adopt and issue policies, rules, and procedures;
(c) set policy by written rules that establish criteria and procedures for:
(i) issuing, denying, not renewing, suspending, or revoking a package agency, license,
permit, [or] certificate of approval, or registration; and
(ii) determining the location of a state store, package agency, or retail licensee;
(d) decide within the limits, and under the conditions imposed by this title, the number
and location of state stores, package agencies, and retail licensees in the state;
(e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses
permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing,
consumption, manufacture, and distribution of an alcoholic product:
(i) a package agency;
(ii) a full-service restaurant license;
(iii) a master full-service restaurant license;
(iv) a limited-service restaurant license;
(v) a master limited-service restaurant license;
(vi) a bar establishment license;
(vii) an airport lounge license;
(viii) an on-premise banquet license;
(ix) a resort license, under which at least four or more sublicenses may be included;
(x) an on-premise beer retailer license;
(xi) a reception center license;
(xii) a beer-only restaurant license;
(xiii) a hotel license, under which at least three or more sublicenses may be included;
(xiv) subject to Subsection (4), a single event permit;
(xv) subject to Subsection (4), a temporary beer event permit;
(xvi) a special use permit;
(xvii) a manufacturing license;
(xviii) a liquor warehousing license;
(xix) a beer wholesaling license;
(xx) a liquor transport license;
(xxi) an off-premise beer retailer state license;







package agency, license, [or] permit, or registration under this title; (c) have an office, position, or relationship, or be engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment of the commissioner, director, or applicable department employee for whom the person is immediate family; (d) accept a gift, gratuity, emolument, or employment from: (i) a person who applies for or holds a package agency, license, [or] permit, or registration under this title; or (ii) an officer, agent, or employee of a person who applies for or holds a package agency, license, [or] permit, or registration under this title, except that an immediate family member may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or (e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person to any office or employment with a person who applies for or holds a package agency, license, [or] permit, or registration under this title. (4) An officer, agent, attorney, or employee of a person who applies for or holds a package agency, license, [or] permit, or registration under this title may not directly or indirectly solicit, request, or recommend to the governor, any state senator, the commission, or the department the appointment of any person: (a) as a commissioner; (b) as director of the department; or (c) to a department staff position. (5) (a) A commissioner shall disclose during a meeting of the commission a potential violation of this section, including the existence and nature of a professional, financial, business, or personal interest with a person who holds, or an applicant for, a package agency, license, [or] permit, or registration issued under this title that may result in a violation of this section. (b) After a commissioner makes a disclosure under Subsection (5)(a): (i) the commission may, by motion, determine whether there is a potential violation of this section; (ii) if the commission determines that there is a potential violation of this section:

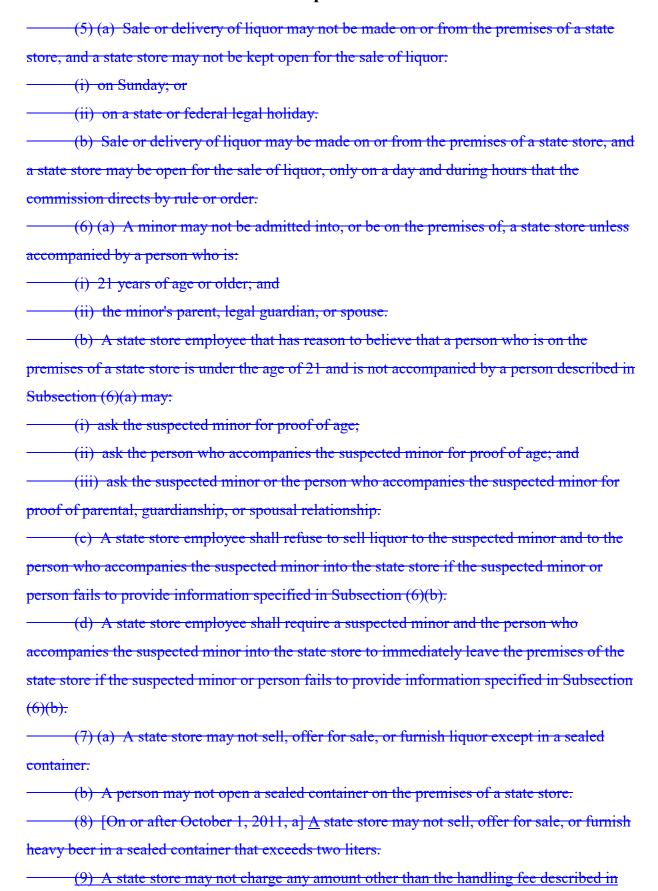
- (A) the commission shall notify the governor; and
- (B) the commissioner may not vote on any matter that would result in the potential violation of this section; and
- (iii) if the commission determines that there is not a potential violation of this section, a commissioner may elect whether to vote on the issue that gives rise to the disclosure under Subsection (5)(a).
- (c) The commission shall record any declaration of a potential violation of this section in the minutes of the meeting.
- 32B-2-304. Liquor price -- School lunch program -- Remittance of markup.
 - (1) For purposes of this section:
 - (a) (i) "Landed case cost" means:
 - (A) the cost of the product; and
 - (B) inbound shipping costs incurred by the department.
- (ii) "Landed case cost" does not include the outbound shipping cost from a warehouse of the department to a state store.
 - (b) "Proof gallon" means the same as that term is defined in 26 U.S.C. Sec. 5002.
- (c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt beverage.
 - (2) Except as provided in [Subsection] Subsections (3) and (4):
- (a) spirituous liquor sold by the department within the state shall be marked up in an amount not less than 88% above the landed case cost to the department;
- (b) wine sold by the department within the state shall be marked up in an amount not less than 88% above the landed case cost to the department;
- (c) heavy beer sold by the department within the state shall be marked up in an amount not less than 66.5% above the landed case cost to the department; and
- (d) a flavored malt beverage sold by the department within the state shall be marked up in an amount not less than 88% above the landed case cost to the department.
- (3) (a) Liquor sold by the department to a military installation in Utah shall be marked up in an amount not less than 17% above the landed case cost to the department.
 - (b) Except for spirituous liquor sold by the department to a military installation in

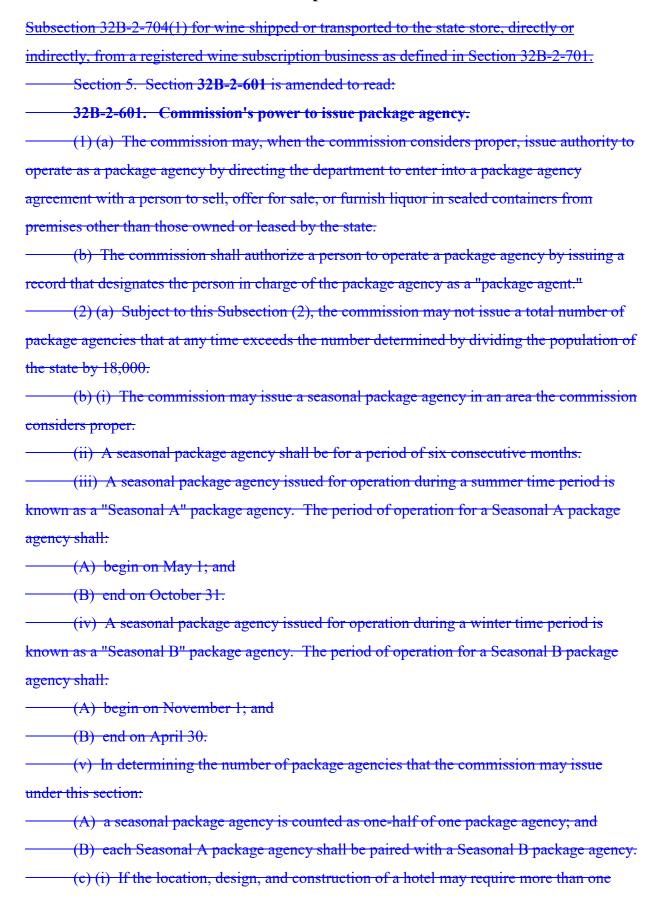
Utah, spirituous liquor that is sold by the department within the state shall be marked up 49% above the landed case cost to the department if:

- (i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000 proof gallons of spirituous liquor in a calendar year; and
 - (ii) the manufacturer applies to the department for a reduced markup.
- (c) Except for wine sold by the department to a military installation in Utah, wine that is sold by the department within the state shall be marked up 49% above the landed case cost to the department if:
- (i) (A) except as provided in Subsection (3)(c)(i)(B), the wine is manufactured by a manufacturer producing less than 20,000 gallons of wine in a calendar year; or
- (B) for hard cider, the hard cider is manufactured by a manufacturer producing less than 620,000 gallons of hard cider in a calendar year; and
 - (ii) the manufacturer applies to the department for a reduced markup.
- (d) Except for heavy beer sold by the department to a military installation in Utah, heavy beer that is sold by the department within the state shall be marked up 32% above the landed case cost to the department if:
 - (i) a small brewer manufactures the heavy beer; and
 - (ii) the small brewer applies to the department for a reduced markup.
- (e) The department shall verify an amount described in Subsection (3)(b), (c), or (d) pursuant to a federal or other verifiable production report.
- (f) For purposes of determining whether an alcoholic product qualifies for a markup under this Subsection (3), the department shall evaluate whether the manufacturer satisfies the applicable production requirement without considering the manufacturer's production of any other type of alcoholic product.
- (4) Wine the department purchases on behalf of a subscriber through the wine subscription program established in Section 32B-2-702 shall be marked up not less than 88% above the cost of the subscription for the interval in which the wine is purchased.
- [(4)] (5) The department shall deposit 10% of the total gross revenue from sales of liquor with the state treasurer to be credited to the Uniform School Fund and used to support the school lunch program administered by the State Board of Education under Section 53E-3-510.

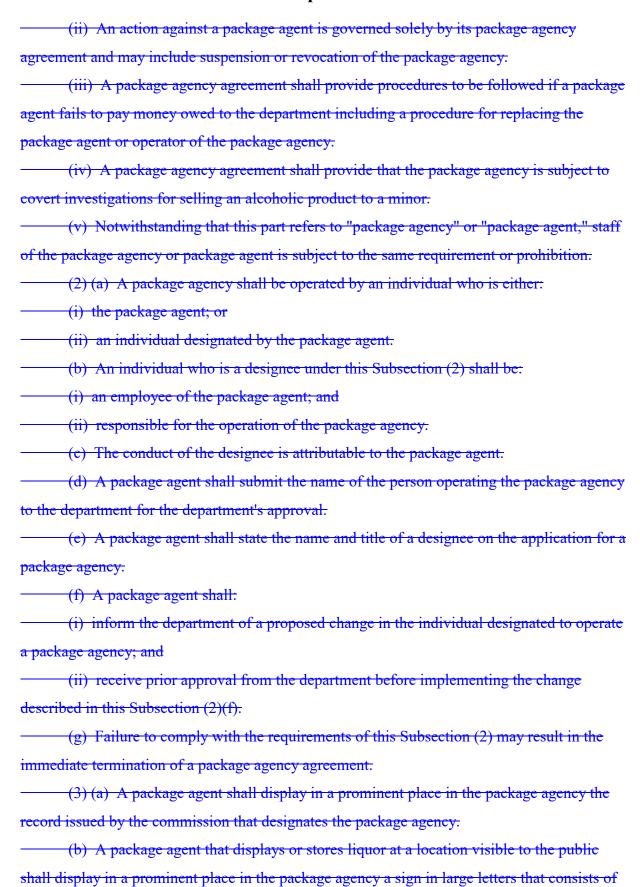
[(5)] (6) This section does not prohibit the department from selling discontinued items

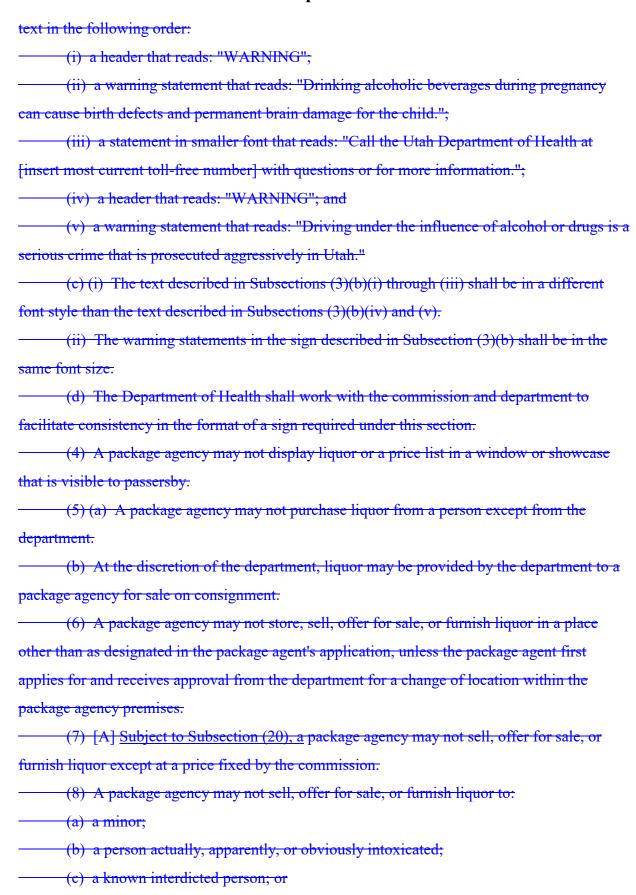
at a discount. Section {4. Section 32B-2-503 is amended to read:} 32B-2-503. Operational requirements for a state store. (1) (a) A state store shall display in a prominent place in the store a sign in large letters that consists of text in the following order: (i) a header that reads: "WARNING"; (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child."; (iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information."; (iv) a header that reads: "WARNING"; and (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." (b) (i) The text described in Subsections (1)(a)(i) through (iii) shall be in a different font style than the text described in Subsections (1)(a)(iv) and (v). (ii) The warning statements in the sign described in Subsection (1)(a) shall be in the same font size. (c) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section. (2) [A] Except as provided in Subsection (9), a state store may not sell, offer for sale, or furnish liquor except at a price fixed by the commission. (3) A state store may not sell, offer for sale, or furnish liquor to: (a) a minor; (b) a person actually, apparently, or obviously intoxicated; (c) a known interdicted person; or (d) a known habitual drunkard. (4) (a) A state store employee may not: (i) consume an alcoholic product on the premises of a state store; or (ii) allow any person to consume an alcoholic product on the premises of a state store. (b) A violation of this Subsection (4) is a class B misdemeanor.

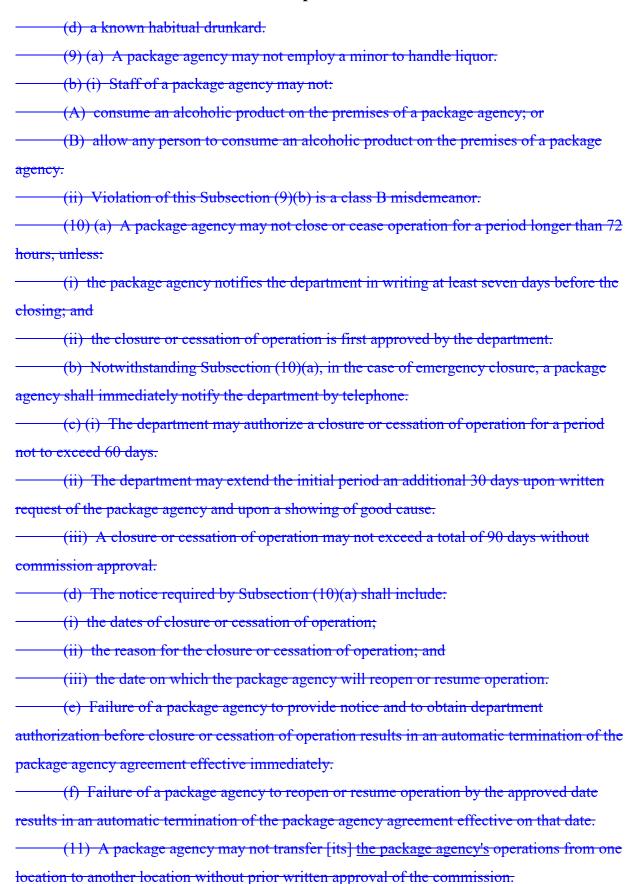


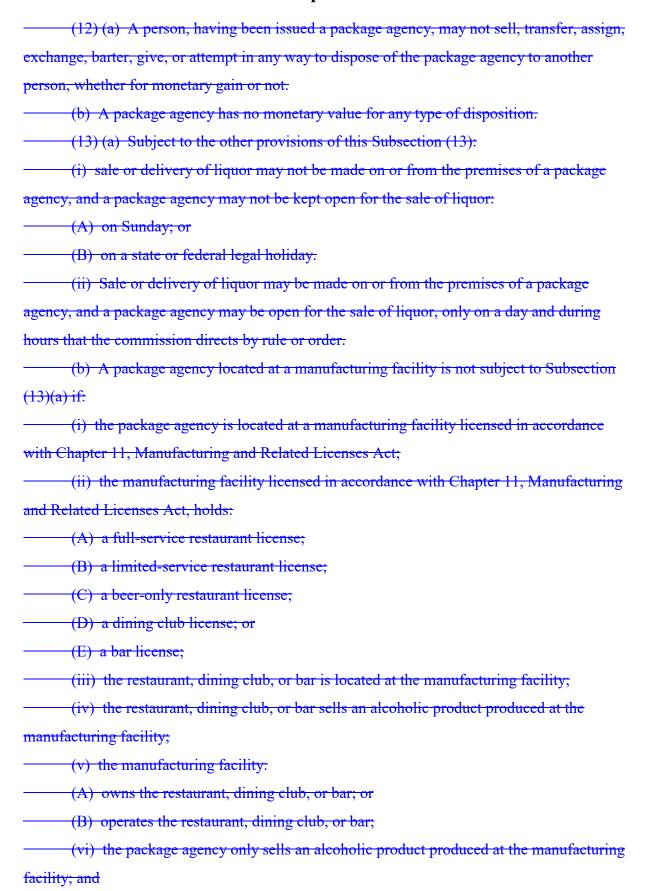


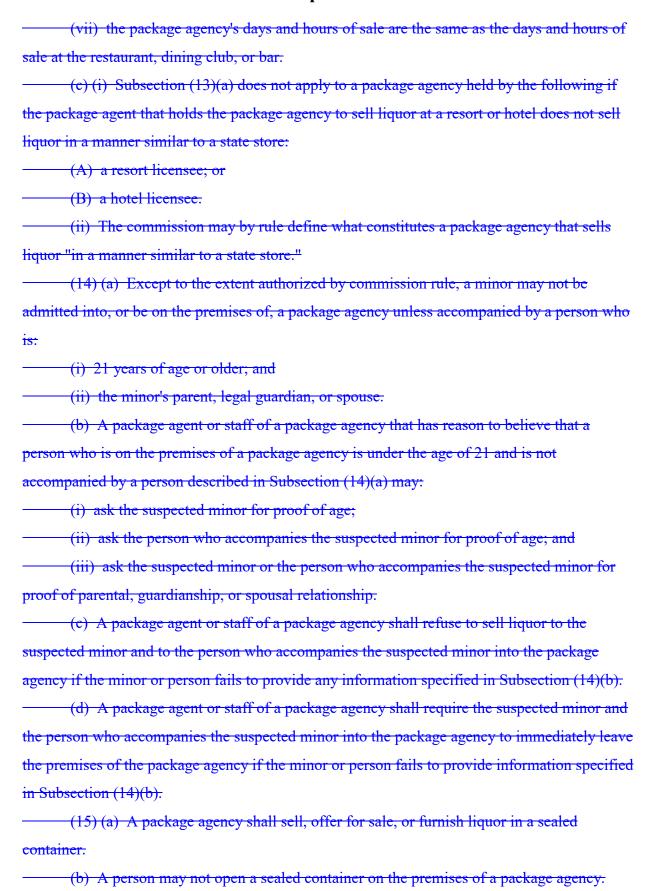
package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if: (A) the hotel has a minimum of 150 guest rooms; and (B) all locations under the package agency are: (I) within the same hotel; and (II) on premises that are managed or operated, and owned or leased, by the package agent. (ii) A facility other than a hotel shall have a separate package agency for each location where liquor may be sold, offered for sale, or furnished. (3) (a) A package agent, under the direction of the department, is responsible for implementing and enforcing this title and the rules adopted under this title to the extent this title and the rules relate to the conduct of the package agency and a package agency's sale or furnishing of liquor. (b) (i) A package agent may not be a state employee. (ii) A package agent may not be construed to be a state employee or otherwise entitled to any benefit of employment from the state. (c) A package agent, when selling or furnishing liquor from a package agency, is considered an agent of the state only to the extent specifically expressed in the package agency agreement. (4) The commission may prescribe by rule one or more types of package agencies issued under this part that are consistent with this title. Section 6. Section 32B-2-605 is amended to read: 32B-2-605. Operational requirements for package agency. (1) (a) A person may not operate a package agency until a package agency agreement is entered into by the package agent and the department. (b) A package agency agreement shall state the conditions of operation by which the package agent and the department are bound. (c) (i) If a package agent or staff of the package agent violates this title, rules under this title, or the package agency agreement, the department may take any action against the package agent that is allowed by the package agency agreement.

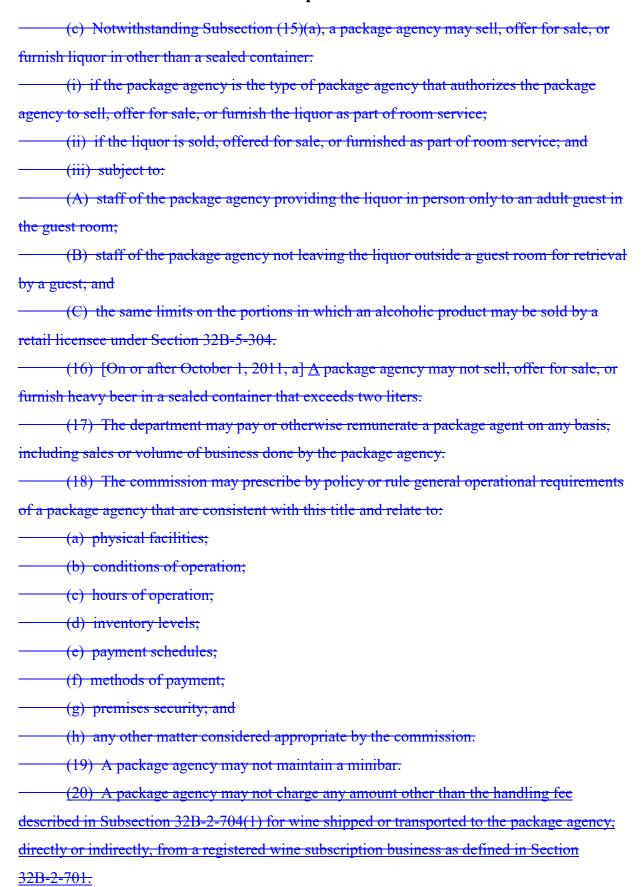












Section 7\2. Section 32B-2-701 is enacted to read: 32B-2-701. Definitions. As used in this part: (1) "{Registered wine subscription business" means} Subscriber" means an individual who subscribes to a wine subscription {business that registers with the department in accordance with as described in Subsection 32B-2-702(2). (2) "Subscription program" means the wine subscription program established in Section 32B-2-702. ₹ (2) "Wine subscription business" means a person that sells or offers for sale a wine subscription.} (3) "Wine subscription" means an arrangement in which a customer pays a {person a} recurring price at regular intervals for a product that involves the shipment or transportation of wine. (Section 8)(4) "Wine subscription business" means a person that: (a) sells or offers for sale a wine subscription; and (b) contracts with the department to participate in the subscription program. Section 3. Section 32B-2-702 is enacted to read: 32B-2-702. Wine subscription {registration -- Duties. (1) Before a person as a wine subscription business may sell or offer for sale a wine subscription that involves shipping or transporting wine to a customer in the state, the person shall first register with the department in accordance with this section. (2) To register as a wine subscription business, a person shall submit to the department: (a) a written application in a form the department prescribes; (b) a nonrefundable application fee of \$300; (c) if the person applying is an entity, verification that an individual who signs the application is authorized to sign on behalf of the entity; and (d) any other information the commission or department may require. (3) (a) Registration under this section expires August 31 of each year. (b) To renew a registration under this section, a registered wine subscription business shall submit to the department no later than July 31:

(i) a renewal application in a form the department prescribes;
(ii) a nonrefundable renewal fee of \$100; and
(iii) any other information the commission or department requires.
(4) A registered wine subscription business shall:
(a) only sell or offer for sale a wine subscription to an individual who is 21 years
of age or older;
(b) ensure that all wine the wine subscription business ships or transports to a
customer in the state as part of a wine subscription:
(i) is delivered to a state store or package agency; and
(ii) is not otherwise available for sale by the department; and
(c) cooperate with the department to ensure that after the registered wine
subscription business ships or transports wine in accordance with this Subsection (4), the
state store or package agency can furnish the wine to the intended customer.
Section 9. Section 32B-2-703 is enacted to read:
32B-2-703. Commission and department duties before approving a wine
subscription registration.
Before approving a registration under this part, the commission shall determine
that the person:
(1) filed a complete application; and
(2) is in compliance with this title.
Section 10. Section 32B-2-704 is enacted to read:
32B-2-704. Department handling of wine subscription products} program.
(1) The department shall establish {a program that:
(a) permits a registered} and administer a wine subscription program as described in
this part.
(2) The subscription program shall permit an individual to subscribe to a wine
subscription that a wine subscription business {to ship or transport wine:
(i) as part of a}sells or offers for sale by:
(a) enrolling in the wine subscription program in a manner the department prescribes;
(b) authorizing the department to purchase the wine subscription in the individual's
name:

- (c) paying the department, in a manner the department prescribes:
- (i) the price of the wine subscription; { and}
- (ii) {to a state store or package agency, as the customer of the wine subscription determines;
- (b) notifies the customer of a wine subscription when wine delivered to a state store or package agency as} in addition to any tax, the markup described in Subsection {(1)(a) is ready for the customer to collect;
 - (c) ensures 32B-2-304(4); and
 - (iii) a fee the department charges in accordance with Subsection 32B-2-703(1); and
- (d) designating the state store or package agency {verifies that}at which the individual {who collects} would prefer to collect the wine{ is the customer who purchased the wine through}.
 - (3) The department shall:
- (a) designate by contract with a wine subscription business the department warehouse to which the wine subscription business ships or transports wine under the subscription program;
- (b) deliver wine purchased through the subscription program to the appropriate state store or package agency; and
- ({d) upon collection of the wine, requires}c) notify a subscriber when wine purchased through the subscription program is ready for the subscriber to collect from the state store or package agency {to charge the customer a handling fee that the department establishes in accordance with Title 63J-1-504.
- (2) The department may not charge or collect a markup described in Section 32B-2-304 on wine shipped or transported to a state store or package agency from a registered wine subscription business.
 - Section 11 described in Subsection (3)(b).

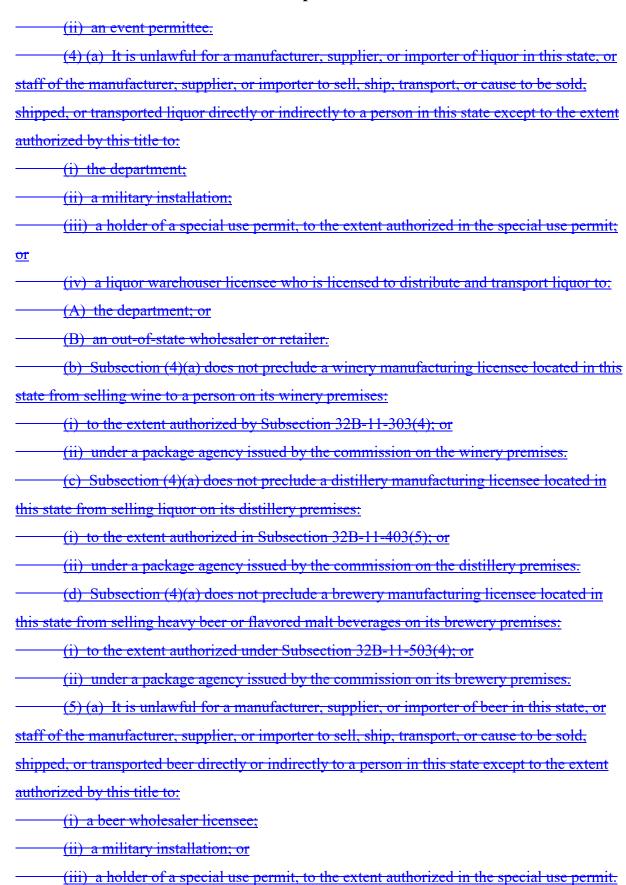
Section 4. Section $\{32B-2-705\}$ 32B-2-703 is enacted to read:

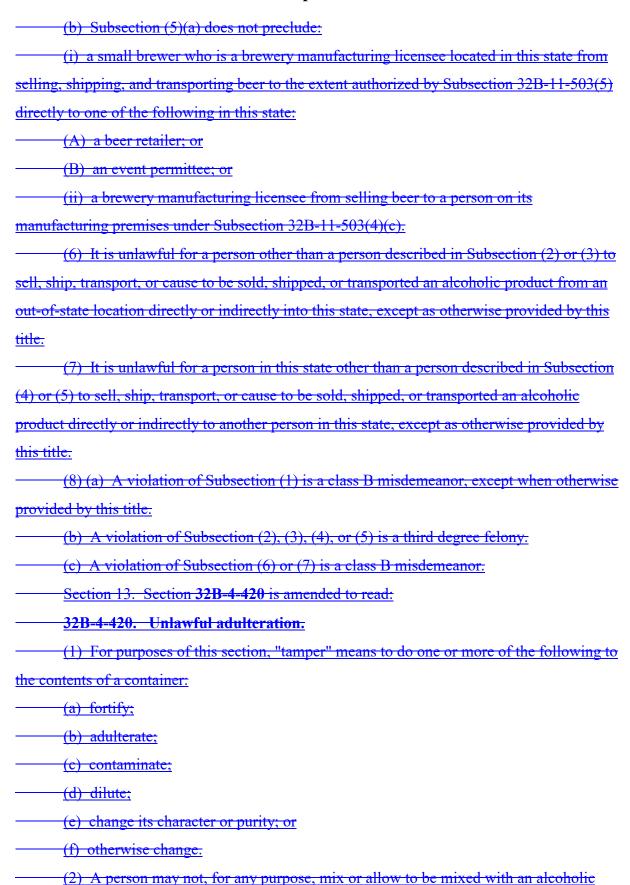
{32B-2-705}**32B-2-703.{ Rulemaking.**

- The commission shall? Fees -- Rulemaking.
 - (1) The department may charge a fee as part of the subscription program:
 - (a) in accordance with Section 63J-1-504; and

(b) to cover costs to the department for administering the subscription program. (2) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, {to administer} for the administration of this part { and adjust to an evolving market. Section 12. Section 32B-4-401 is amended to read: 32B-4-401. Unlawful sale or furnishing. (1) It is unlawful for a retail licensee, a permittee, a registrant, or staff of a retail licensee [or], permittee, or registrant to keep for sale, or to directly or indirectly, sell, offer for sale, or furnish to another, an alcoholic product, except as otherwise provided by this title. (2) It is unlawful for a person in the business of selling liquor, a manufacturer, a supplier, an importer of liquor, or staff of the person, manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or transported liquor from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to: (a) the department; (b) a military installation; (c) a holder of a special use permit, to the extent authorized in the special use permit; or (d) a liquor warehouser licensee licensed to distribute and transport liquor to: (i) the department; or (ii) an out-of-state wholesaler or retailer. (3) (a) It is unlawful for a person in the business of selling beer, a manufacturer, a supplier, an importer of beer, or staff of the person, manufacturer, or importer to sell, ship, transport, or cause to be sold, shipped, or transported beer from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to: (i) a beer wholesaler licensee; (ii) a military installation; or (iii) a holder of a special use permit, to the extent authorized in the special use permit. (b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of approval from selling, shipping, or transporting beer to the extent authorized by Subsection 32B-11-503(5) directly to:

(i) a beer retailer; or





product sold or supplied by the person as a beverage any of the following:
(a) a drug;
(b) methylic alcohol;
(c) a crude, unrectified, or impure form of ethylic alcohol; or
(d) another deleterious substance.
(3) (a) The following may not engage in an act listed in Subsection (3)(b):
(i) a package agent;
(ii) a retail licensee;
(iii) a permittee;
(iv) a beer wholesaler licensee;
(v) a liquor warehouser licensee;
(vi) a supplier; [or]
(vii) an importer[.]; or
(viii) a registrant.
(b) A person listed in Subsection (3)(a) may not:
(i) tamper with the contents of a container of alcoholic product as originally marketed
by a manufacturer;
(ii) refill or partly refill with any substance the contents of an original container of
alcoholic product as originally marketed by a manufacturer;
(iii) misrepresent the brand of an alcoholic product sold or offered for sale; or
(iv) sell or furnish a brand of alcoholic product that is not the same as that ordered by a
purchaser without first advising the purchaser of the difference.
†, including rules designating which package agencies may receive from the department wines

that are purchased through the subscription program.